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WASHINGTON, D.C. 20037

February 1, 1994

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FEB 2 1994

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VIA AIRBORNE EXPRESS

Office of the Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Re: Cable Rate Regulation
MM Docket No. 93-215
Ex-Parte Communication

Ladies and Gentlemen:

The following Ex-Parte Communication is submitted for inclusion in MM Docket No. 93-215.

The attached information responds to the enclosed NATOA Action Alert dated January 27, 1994. With respect to item 1, "Form 393 Problems", please find the enclosed memo from Eftyhia Chari to Matthew L. Leibowitz dated January 31, 1994. Therein, Ms. Chari discusses certain anomalies in FCC Form 393 that can create an inflated equipment base rate.

With respect to item 2 in the NATOA Action Alert, certification discouragement, please find correspondence dated July 1, 1993 and August 24, 1993 between Cablevision Industries and the City Manager of DeLand, Florida. These letters set out CVI's view that if a franchising authority is satisfied with its rates, there is no need to file for a certification with the FCC. Also enclosed is a memorandum from Americable (Cable Satellite of South Miami, Inc.) to the City Manager of South Miami, Florida, explaining, among other things, why the City should allow Dade County to regulate cable rates. The response of the City's Communications Counsel dated December 21, 1993 is also enclosed.

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With respect to item 4 of the NATOA Action Alert, "rate increases," please find correspondence between Counsel for the City of South Miami and Counsel for Cable Satellite of South Miami, Inc. regarding alleged violations of the cable television rate freeze. Also enclosed are various items of correspondence relating to a service contract offered by Cable Satellite of South Miami, Inc.

Thank you for your consideration of these items.

Sincerely yours,

Leibowitz & Associates

By


Joseph A. Belisle

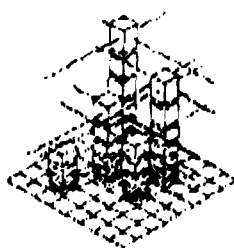
JAB:tmr

cc: John Spencer

Jan. 27, 1994 16 3:26PM 20M-D CONSUMER SERVICES DEPARTMENT TIES

No. 5925 P. 2/3 1/002

From: CATHY GRIME-PEEL



NATOA ACTION ALERT

The National Association of Telecommunications Officers and Advisors

An affiliate of the National League of Cities

DATE: 1/27/94 FEB 2 1994

PLEASE DISTRIBUTE TO APPROPRIATE INDIVIDUAL

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Jan. 27, 1994 16 3:26PM 20M-D CONSUMER SERVICES DEPARTMENT TIES

No. 5925 P. 3/2/002
From: CATHY GRIME-PEEL

FEB 2 1994

January 27, 1994

FCC - MAIL ROOM

FCC MAY MODIFY ITS RATE REGULATION RULES

The FCC may modify its rate regulation rules at its next meeting in February. In order to get the FCC timely information, it is critical to communicate with them by Wednesday, February 2, 1994. Information is especially important on these issues:

1. Form 393 Problems

Please specify any problems you have encountered regarding the 393 forms filed by the cable television operators, such as:

- difficulties in obtaining information
- filling out the wrong form
- receiving wrong information on rates, channels, etc.
- wrong initial date of regulation
- miscalculation of franchise fee deduction
- submission of an incomplete form

2. Certification Discouragement

Please provide documentation of examples where the cable operator has attempted or succeeded in discouraging a municipality from exercising its rate regulatory authority.

3. Benchmark - Outliers

In those jurisdictions where the benchmark formula is applied, please provide examples of those cases where the rates are at least 11 percent above the benchmark.

4. Rate Increases

In those jurisdictions where municipalities are currently certified, please submit examples of proposed rate increases for equipment or service rates.

Please send copies of the above-referenced information to:

John Spencer
Cable Services Bureau
FCC, Room 700-C
Washington, DC 20554
FAX TO: 202/416-0870
PHONE: 202/416-0951

AND

Renée Winsky
NATOA
1301 Pennsylvania Ave., NW
Washington, DC 20004
FAX TO: 202/626-3103
PHONE: 202/626-3160

Because of the time deadline, please consider calling or faxing your information!!

MEMORANDUM

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TO: Matthew L. Leibowitz
FROM: Eftyhia Chari
DATE: January 31, 1994
RE: Problems with Form 393

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Worksheet 1, Line 104 requires the monthly equipment revenue for basic services. The FCC says that companies should take the total revenues they earned over the last fiscal year and divide by 12. The monthly average number is added to monthly subscriber revenue to come up with the charge factor in Line 105. Using this charge factor, we divide by the channel factor in Line 106 and we get an unbundled base rate per channel in Line 107. Line 107 includes subscriber revenue and equipment revenue; the equipment revenue is not unbundled.

Worksheet 3, Line 301, should have the same amount as Line 104. Line 301 is divided by the same channel factor in Line 106 or 302 and we get a cost per subscriber-channel for equipment revenue. We subtract this number from the unbundled base rate per channel in Line 107 or 300 in order to get the base service rate per channel. This has the effect of unbundling the equipment revenue. The end result of Worksheet 3 is the base service rate per channel.

If Line 104 and Line 301 are equal or substantially equal, there is a neutral affect to the base rate. The equipment revenue is added in Line 104 and subtracted in Line 301 and divided by the same channel factor in both instances. Therefore, mathematically, there is a zero effect.

Problem:

The problem arises when Line 104 and Line 301 are not equal or when Line 204 and Line 301 are not equal. The difference between the two numbers is the loophole that the FCC mentioned in the Q & A on November 10, 1993. Should the cable companies have to redo the Form 393?

Example: If Line 104 or Line 204 has an equipment revenue of \$300,000 and Line 301 has an equipment revenue of \$60,000, then the companies are adding \$300,000 and subtracting only \$60,000. Therefore, they are getting the benefit of an inflated base rate of \$240,000.



FEB 2 1994

FCC-BUREAU

July 1, 1993

Mr Wayne Sandborn, City Manager
P.O. Box 449
DeLand, FL 32721

RE: Rate Regulation of Basic Cable Television Service

Dear Mr Sanborn:

The Cable Act of 1992 is creating many changes in the delivery and pricing of cable television services. A few weeks ago we wrote to you describing some of the changes we are anticipating in the programming we offer. Today, we are writing to you concerning rate regulation of basic cable service.

Under the Cable Act, local franchising authorities have the option of regulating basic cable television service. In our system, that service is called Basic Reception Service and generally includes local broadcast stations, but not cable satellite networks such as CNN, DISCOVERY or ESPN.

On May 5, the Federal Communications Commission set forth the procedures that will govern rate regulation. These procedures are embodied in a 500-plus page set of rules, regulations, worksheets and pricing grids. These procedures are so complex that on June 11 the FCC postponed the effective date of the rate rules for almost four months, until October 1, 1993, "to provide franchise authorities and cable operators additional opportunity to ensure a smooth transition. . .".

One aspect of the new procedures permits the cable operator to demand that the local franchising authority conduct a "cost of service" proceeding. Cost of service proceedings are normally undertaken by state-level public service commissions to set rates for utilities such as telephone and electric service. These proceedings tend to be complicated and lengthy, involving expert involvement on legal, technology, accounting, finance and economic issues. As a result, such proceedings are costly for both the governmental authority and the company.

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FCC - BUREAU

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CVI wants to avoid any unnecessary regulatory costs; we assume that you also want to avoid the unnecessary costs of regulation as well as any reduction in the local franchise fees we pay to you. We believe there are practical alternatives to rate regulation that will save each of us time and money. We will be calling you shortly to arrange for a meeting to discuss these alternatives.

In order to give you some insight into FCC rate regulation before we meet, I will summarize some of the key points in the next few paragraphs.

Pricing of Basic Cable Television Service

The FCC has established various "benchmarks" setting forth the per-channel prices that cable operators may charge in communities where there is no "effective competition" as that term is defined in the Act. Under the Act, the local franchising authority, has the right, if it chooses (there is no obligation), to regulate basic service rates and related equipment only. There is no local right to regulate our services above the "Reception Basic Service" level.

The right to regulate is not unqualified, however. In order to regulate the basic service rate, the franchising authority must file with the FCC a certification that sets forth the municipality's desire to regulate these rates and that further certifies that the franchising authority has the legal authority to regulate rates and has adopted rules or regulations consistent with those required by the FCC; that interested parties in the rate setting process will be afforded an opportunity to be heard on the issues.

Recognizing that the cable operator's costs to provide cable service could justify prices higher than the benchmark price, the FCC concluded that if the franchising community decided to regulate basic service, then the cable operator would have the right to demand a "cost of service" showing before the municipality. One reason for the FCC entitling cable operators to opt for a cost of service showing is the FCC's acknowledgment that certain costs associated with basic service, as well as with equipment and installations relating to basic service, have been excluded by the FCC in its establishment of the benchmark rates.

CVI

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Consequently, the FCC expressly provides that the cable operator would be entitled to include these excluded costs in a cost of service showing as part of the operator's general system overhead. Also certain excluded costs for changes in services or equipment could be included by the operator as part of general system overhead in a cost of service proceeding. Additionally, the operator is entitled to show in this proceeding that the rate of return permitted by the FCC is insufficient for the operator to maintain its financial integrity and to attract new capital to its business. If it were to make such a showing, the operator would be entitled to increase its rate of return and possibly its rates.

The Price Freeze Now In Effect

As part of the FCC rate regulation rules, cable operators are permitted now through October 1, 1993, to adjust prices for basic and expanded basic service provided that the average monthly subscriber bill for regulated cable services does not increase above the average monthly subscriber bill in effect on April 5, 1993 for the regulated services. It is possible that some subscribers' bills will go up, while others will go down. We want you to know we are unhappy with this result in that consumers whose bills increase will likely assume that CVI is acting improperly.

We believe there are ways to minimize the effect of these price adjustments, and as a result of its announcement on June 11, the FCC has now extended the time for making price adjustments to October 1. We are hoping to meet with you during the next month or so if we possibly can to fully review the issues and options before us. In the meantime, you will not forfeit your right to seek certification to regulate our basic rates if you wait until we meet with you. You may exercise this right at any time on or after October 1, 1993.

Thank you for your consideration of this letter. Should you have any questions before we contact you again, please call me.

Very truly yours,



Robert A. Bevis
General Manager



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FCC - BUREAU

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subscriber, with Full Cablevision service, HBO and two outlets with remotes will see the following rate changes:

	Current	Sept 1
Full Cablevision Service	\$23.95	\$23.95
HBO	\$10.95	\$10.95
Additional Outlet	\$ 4.25	\$ 1.25
Converters	\$ 4.00	\$ 5.50
Remotes	\$ 8.00	\$ 1.50
Total Monthly Charge	\$51.15	\$43.15

Those subscribers with more services will see greater reductions. But everyone will not automatically see a decrease. The subscriber with only Full Cablevision Service and without a "cable ready" TV set will see an increase of \$1.50 due to the initial converter charge.

Subscribers will be notified by newspaper advertisement this week. Due to date changes at the FCC, the new rates will not be reflected on the monthly bills until October, but they are effective September 1st. The October invoices will reflect a pro-rated amount back to September 1.

We are well aware that this will be extremely confusing to our customers, but it could not be avoided. We anticipate an elevated telephone call load as we have from every change. We anticipate that you may also receive calls from subscribers and offer to work closely with you to resolve any questions or problems that may arise.

Sincerely,

Robert A. Bevis
General Manager

Encl

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	Current Rate	New Rate	
Full CVI Service	\$23.95	\$23.95	
consisting of:			
Reception Service	\$11.95	\$8.55	
Prog Tier 1	\$12.00	\$12.40	
Prog Tier 2		\$3.00	27-178-1-2
consisting of:			
Headline News		\$1.50	ala Carte Price
TNT		\$1.50	ala Carte Price
Discovery		\$1.50	ala Carte Price
Additional Outlet	\$4.25	\$1.25	
Converter Rental-Basic	\$4.00	\$1.50	
Converter Rental-Addr	\$4.00	\$2.75	
Remote	\$4.00	\$0.75	
Pay Services	Various	No Change	



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1-800-333-4000

304-775-7300 FAX 304-775-9303

RATE REGULATION - A PRACTICAL VIEW

As you can see from the attached rate chart, changes have been made to bring CVI's rates to as close as possible to the FCC benchmarks. We have reduced rates in every category that would be regulated by the local franchising authority, even though we are not regulated at this time.

The basic rates are not exactly on the FCC benchmarks in each case as they have been adjusted slightly to provide even rates in the three major service areas within the county. If we followed the benchmarks exactly we would have nine different rates in the nine franchise areas that we serve. We believe this makes more sense, and is less confusing to customers and staff alike.

The Additional Outlet rates have been drastically reduced but are still higher than the benchmarks. It is CVI's position that our prices are based on the actual costs to maintain additional outlets.

If the Franchising Authority is satisfied that our rates are fair, there is no need to file for certification with the FCC. Even without certification, we will be consulting each Franchising Authority prior to future rate changes and will endeavor to reach a compromise agreement.

We each have recourse if agreement is impossible. CVI can seek relief with the FCC, and the Franchise Authority can file for certification with the FCC. There are no time constraints on either action and the Franchise Authority can request rate refunds back to September 1, 1993 or one year, whichever is shorter, if CVI rates are unjustified.

Once a Franchise Authority certifies, it must follow the FCC guidelines. It cannot settle rate regulation issues informally. Both parties actually lose the ability to negotiate and reach a settlement. The FCC, through the Franchising Authority, is still regulating the rates.



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Under certified rate regulation, CVI in Volusia could not maintain the service level required by the FCC at the benchmark rates and would be forced to seek relief in cost of service hearings as provided for in the FCC rules. The cost of the research, accountants, presentation art & graphics, consultants, expert witnesses, and other costs would cost each side thousands of dollars. These costs would be passed on to the franchising authorities constituents and CVI's subscribers as a cost of doing business, and should be avoided if possible. On the part of the Franchising authority, it could more than consume the entire franchise fees that CVI pays to the Authority.

In a cost of service presentation, CVI asserts a given cost for a service and the Franchising Authority must verify that cost for each and every item. They will be required to use accountants or consultants to review every aspect of CVI's financial records to accomplish this momentous task.

Once certified, there is no decertification process. The Franchising Authority is locked into rate regulation indefinitely.

CVI is committed to providing a quality cable service at a reasonable rate. We believe that we have demonstrated that fact in the nine years we have operated in the Volusia area. We believe that the interests of our subscribers and your constituents would be best served in an environment where local agreement determines our rates and prices, instead of rates being determined by the FCC or in expensive formal cost of service presentations.

For questions or concerns, please contact:

Bob Bevis (904) 775-4444 Ext 102

Rich Gunter (904) 775-4444 Ext 202

ENTERTAINMENT by

★ AMERI-CABLE ★

your Satellite Connection

AMERICABLE INTERNATIONAL, INC.

10711 S.W. 216 St., Ste. A100
Miami, Florida 33170

305-232-9208

800-227-3954

Fax: 305-252-9097

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FCC - MAIL ROOM

December 17, 1993

Mr. William F. Hampton
City Manager
City of South Miami
6130 Sunset Drive
South Miami, FL 33143

Dear Mr. Hampton:

To follow up on our discussions over the past several weeks, please find enclosed the rationale as to why the City should allow Dade County to regulate the various aspects of cable tv in the City of South Miami.

As to rate regulations, the primary focus is for the City to save money. Keep in mind that should the City at some point recognize that the county is not acting in their best interest, the City could then decide to regulate at some future date which the laws allow.

Pertaining to the customer service standards, Dade County is already regulating our company to the limits of the law. The City does not have the staff to monitor our performance nor does the City have the money. This issue will only result in protracted litigation.

With all respect, I ask the Commission to review their various options before passing the various ordinances.

Sincerely,


Rick Hensley
V.P. Finance

cc: Ms. Cathy McCann, Mayor
Mr. Tom T. Cooper, Vice Mayor
Ms. Betty Banks, Commissioner
Mr. Neil Carver, Commissioner
Ms. Ann Bass, Commissioner

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MEMORANDUM

FCC - MAIL ROOM

FROM: CATHY CHRISTENSEN

TO: RICK HENSLEY

DATE: DECEMBER 16, 1993

RE: CITY OF SOUTH MIAMI - RATE REGULATION ORDINANCE
PASSED AND ADOPTED ON DECEMBER 7, 1993, AND
PROPOSED ORDINANCES REGARDING CUSTOMER SERVICE
STANDARDS AND LATE CHARGES SCHEDULED FOR FIRST
READING ON DECEMBER 21, 1993

You have informed me that you would like to meet individually with the City of South Miami (the "City") Commissioners regarding the above-referenced matters in order to advocate Cable Satellite's position that it would prefer that Dade County regulate cable rates in the City of South Miami (even though the City has become certified and is authorized to do so) and would also like the City Commissioners to consider adopting the FCC Customer Service Standards or Dade County's customer service standards in lieu of adopting its own Ordinance.

In order to assist you with your presentation to the City Commissioners, I have prepared a brief synopsis of the issues at hand and have provided you with the exhibits attached to support Cable Satellite's desire to let Dade County regulate rates and enforce customer service standards.

I. RATE REGULATION

As you are aware, the City passed and adopted an ordinance on December 7 giving it the right to regulate rates in accordance with the rules promulgated by the Federal Communications Commission (referred to herein as the "FCC"). Cable Satellite would like the City, before deciding to actually regulate rates on its own, to allow Dade County to regulate such rates.

The Cable Act of 1992 permits regulation of the rates for a cable operator's "basic cable service," and a franchising authority wishing to exert such regulatory jurisdiction must certify in writing to the FCC as follows:

- (1) the franchising authority will adopt and administer rules with respect to the rates subject to regulation that are consistent with the regulations prescribed by the [FCC];

Rich Hensley
December 16, 1993
Page 2

(2) the franchising authority has the legal authority to adopt, and the personnel to administer, such regulations; and

(3) procedural laws and rules governing rate regulation proceedings by such authority provide a reasonable opportunity for consideration of the views of interested parties.

See 47 U.S.C. § 543(a)(3) - (4) attached hereto as Exhibit A.

In Dade County, both Dade County and the City have, pursuant to the certification requirements set forth above, filed separate applications to become certified with the FCC. Cable Satellite was notified that Dade County's Form 328 application was filed on or about September 13, 1993, and the City's Form 328 application was subsequently filed on or about October 13, 1993.

Barring any action taken by the FCC for an applicant's failure to comply with any of the three criteria listed above, certifications filed with the FCC become effective 30 days after filing. See 47 U.S.C. § 543(a)(4), Exhibit A attached. Thus, it would appear that Dade County's certification became effective sometime in mid-October, while the City's certification became effective sometime in mid-November, depending upon the date of receipt by the FCC of the two applications referred to above.

A reading of the 1992 Cable Act would indicate that the FCC, in promulgating its rules and regulations with respect to rates, contemplated that a "single" franchising authority would obtain the authority to regulate the rates of a cable operator unless, as noted in the legislative history of the Cable Act, two or more communities served by the same cable system file a joint certification and exercise joint regulatory jurisdiction. See FCC Report and Order 93-176 released April 1, 1993, at ¶¶ 75-79 attached hereto as Exhibit B.

The FCC goes on to specifically provide that joint certification for communities served by the same system is permissible and that joint regulation may take several forms, including arrangement where communities share the costs of data collection and hold joint hearings but make independent rate decisions. See FCC Report and Order 93-176 at ¶ 77, Exhibit B attached. In addition, the FCC goes on to provide, among other things, that joint certifications could provide administrative

Rich Hensley
December 16, 1993
Page 3

economies to local authorities. See FCC Report and Order 93-176 at ¶ 78, Exhibit B attached.

Because, however, Dade County and the City have not elected, in accordance with, and as permissible under, the 1992 Cable Act to file a "joint" certification application and upon the effectiveness thereof, to regulate jointly, Dade County and the City is not currently in the position to regulate jointly or share jointly in the administration of rate regulation, nor can it enter into its own intergovernmental agreement to regulate jointly to share in the costs and expenses of rate regulation and enforcement as was suggested at the hearing of the City Commissioners on December 7, 1993.

As noted at the hearing, at least one Dade County cable operator is challenging the certification of Dade County but only to the extent that it allows Dade County to regulate concurrently with a municipality who has become certified based on the theory implicit throughout the 1992 Cable Act that a single franchising authority should be allowed to regulate a cable operator unless more than one franchising authority files for joint certification with the other franchising authority wishing to regulate.

In Ordinance No. 93-120 passed and adopted by Dade County on November 3, 1993, Dade County provides, among other things, that nothing shall prohibit the County, at its discretion, from regulating rates jointly with one or more municipalities. See copy of Ordinance No. 93-120 attached, § 1 at page 2, attached as Exhibit C. As noted above, however, even though there is enabling language contained in this Ordinance, Dade County cannot exercise its discretion to jointly regulate unless, of course, it files an application for joint certification with the FCC. However, it appears that Dade County could, if the City so desired, regulate both incorporated and unincorporated areas of Dade County, including Cable Satellite's franchise area within the City if requested by the cable operator to do so.

You should ask the Commissioners to review Dade County's rate regulation procedures, as set forth in Ordinance No. 93-120. Under the provisions of such Ordinance, the City is allowed to contact Dade County and request that Dade County regulate within the City, provided that the City elects not to regulate itself and advises Dade County accordingly.

Dade County is probably in a better position to regulate its rates for the following reasons:

Rich Hensley
December 16, 1993
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(1) The bulk of Cable Satellite's customers are within the unincorporated areas of Dade County, with only approximately 1,800 subscribers within the City. Regulation by Dade County of all of Cable Satellite's subscribers would ensure that rates will be uniform throughout the unincorporated and incorporated areas of Dade County.

(2) Dade County's Consumer Services Department, Office of Cable Television Coordination, already has in place the personnel and staff required to regulate and enforce rates. Thus, it would seem that the County will be better able to deal with the potential complexity and administrative burden of rate regulation.

(3) Dade County has already passed and adopted Ordinance No. 93-120 setting forth its procedures with respect to rate regulation in compliance with the criteria for rate regulation and is, therefore, upon notice to cable operators, ready, willing and able to regulate, whereas the City has not yet fulfilled its obligations to implement rate regulation procedures, nor, to the best of my knowledge, and with the exception of legal consultants, has the City hired any personnel or staff to regulate and enforce the rates of Cable Satellite.

(4) Dade County plans to utilize internal resources to regulate and no out-of-pocket expense is anticipated. Should rate review require external support, current projections are that expenses will not exceed \$50,000. Such costs will be affected by the complexity of the review and the extent to which external resources are needed. See Memo from Joaquin Avino to Dade County Commissioners at page 2 attached hereto as Exhibit D. Dade County's projections seem to indicate that the County would not overwhelm its resources in order to regulate, which is one of the reasons why many small cities are reluctant to become regulators. See Edmund Andrews, "Enforcement Problems May Help Cable Systems Elude Rate Rules," N. Y. TIMES, Nov. 11, 1993 at A1, attached hereto as Exhibit E.

(5) Local regulation may reduce cable company revenues. Local regulation by more than one franchising authority will almost certainly have an impact on both the County and the City. The extent to which revenues will be lost must be taken into consideration. See Memo from Joaquin Avino to Dade County Commissioners at page 2, Exhibit D attached. In any event, there is a presumption under the FCC rules and regulations that franchising authorities who receive franchise fees have resources to regulate. In order to overcome any presumption that it cannot afford the administrative costs of regulation it would have to provide the FCC with evidence showing why the proceeds of the

Rich Hensley
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Page 5

franchise fees obtained cannot be used to cover the cost of rate regulation. See e.g. FCC Report and Order at ¶ 55 attached as Exhibit F. Therefore, although the City's monies are fungible, the City must be prepared to expend monies, at least to the extent of the franchise fee amounts which it receives from Cable Satellite.

Therefore, even though the City, on December 7, passed and adopted an Ordinance which allows it to regulate rates consistent with the rules and regulations promulgated by the FCC, Cable Satellite should ask the City Commissioners to seriously consider the other alternatives, and, more specifically, to consider allowing Dade County to regulate Cable Satellite's rates within the City.

II. CUSTOMER SERVICE STANDARDS

I believe that at its next scheduled meeting, the City Commissioners will be asked to consider two proposed customer service related ordinances, one having to do with general customer service standards and the other having to do with the regulation of late charges. It is Cable Satellite's position that it should be subject either to the FCC Minimum Customer Service Standards or to Dade County's Customer Service Standards, and you should request that the City Commissioners give consideration to these two alternatives instead of going ahead with the passage of its own stricter set of standards.

A. Customer Service Standards

The FCC has established a set of baseline customer service standards on which local governments may rely to ensure that the cable systems they regulate provide an adequate level of customer service. See excerpts from FCC Order No. 92-263 attached hereto as Exhibit G.

Under the FCC's Rules, local franchise authorities may agree with cable operators to adopt stricter standards and may enact any state or municipal law or regulation which imposes stricter standards. See Paragraph 3, page 2, contained in Exhibit G. Should local governments wish to exceed the customer service standards adopted by the FCC, then they may do so through the franchising process or otherwise with the consent of the cable operator or they may enact an appropriate law or regulation. See Paragraph 12, pages 9 and 10, contained in Exhibit G. However, nothing contained in the provisions of pre-existing franchise terms

Rich Hensley
December 16, 1993
Page 6

are meant to be contravened by these new laws and all pre-existing franchise terms will be grandfathered through the end of the franchise term. See footnote 20, page 10, contained in Exhibit G.

In connection with the passage and adoption by the City of its own customer service standards, rather than creating its own set of standards (which exceed the minimum standards promulgated by the FCC and which also exceed the current customer service standards which all cable operators must comply with in Dade County), Cable Satellite should make sure that the City Commissioners have reviewed and considered the FCC Minimum Customer Service Standards, which are self-executing, and the customer service standards implemented by Dade County. A Copy of the pertinent provisions of the Metro-Dade County Cable Television Ordinance, including certain General Standards set forth in Sections 8AA 38 - 51 thereof, the Consumer Protection Provisions set forth in Sections 8AA 57 - 68 thereof and the Enforcement Provisions set forth in Sections 8AA 69 - 70 thereof are attached hereto as Exhibit H.

All cable operators in Dade County are already required to meet the standards set forth in the Dade County Ordinance. The bulk of the provisions of the Dade County Ordinance meet the requirements of the FCC Standards. Under the FCC's rules, if any standards in any franchise agreement or ordinance fall below the FCC Standards, then the cable operator must comply with the FCC Standards.

Since a reasonable set of customer service standards has already been successfully implemented in Dade County, it makes no good economic sense to expend additional time and monies trying to reach agreement on the City's proposed Customer Service Ordinance, many provisions of which are unfair and unreasonable to the cable operator. For example, compare the fines set forth in the Dade Ordinance to those proposed in the City's Ordinance. Without any compelling reason or justification, the fines are double, triple and even greater than those contained in the Dade County franchise! The FCC's rules provide that a local franchise authority should be free to avail themselves of "reasonable remedies to assure compliance and fairness to all parties." See paragraph 21, page 15, Exhibit H attached.

Once again, you should ask the City Commissioners to consider the administrative burdens of enforcing its own customer service standards and to keep in mind that Dade County has been

Rich Hensley
December 16, 1993
Page 7

enforcing its customer service standards since 1990, and that the Cable Coordinator and staff have done a good job in implementing and enforcing these standards.

Also, the Commissioners need to be reminded that Cable Satellite has only approximately 1,800 subscribers within the City, whereas it has many more subscribers in Dade County. Similar to rate regulation, it would seem to make good sense that the customer service standards adopted be uniform throughout the incorporated and unincorporated areas of Dade County.

The FCC's rules define a "small system" to include 1,000 or less subscribers. The FCC recommends that even its FCC Customer Service Standards should be waived where there may be an undue adverse impact to subscribers. See paragraph 11, pages 8 and 9, Exhibit H. Though Cable Satellite has a bit more than 1,000 subscribers, it is truly a small system in terms of operations and as compared with other operators in Dade County. The stricter the customer service standards are that the City adopts, the more personnel and other costs the system must incur in order to comply with them.

For example, the City's proposed Customer Service Ordinance requires Cable Satellite to have staff physically present at its business office located at 216th Street on Saturdays (even though Cable Satellite also has two alternative convenient customer service and bill paying locations with weekend business hours, and in addition, utilizes at its business office answering services and machines when physical staff is not available after the company's normal business hours). Unreasonable demands such as the example noted above will undoubtedly lead to justifiable increases in overall billing to the City's subscribers--something that would contravene the goals of the 1992 Cable Act.

B. Late Charges

Finally, Cable Satellite should request that the City Commissioners give serious consideration to the passage and adoption of its proposed Late Charge Ordinance. As drafted, the Ordinance would allow Cable Satellite to charge either \$1.00 or 1.5% per month of the total delinquent amount (which in all most instances would be an amount below \$1.00). The use of the 1.5% per month charge or the 18% annual limit suggests that even if a cable operator charges a reasonable late charge related to the costs and

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expenses of collection, if it exceeds the proposed amounts it will be deemed usurious interest under Florida law.

All Dade County cable operators who charge late fees charge fees in amounts between \$5.00 - \$15.00. Such charges relate to the administrative costs of collection and should not be considered a loan to the customer, an extension of credit to a customer, a forbearance to enforce collection of money or "interest", in the common sense of the word.

Though Florida courts have not yet been asked to consider this issue, in many other jurisdictions late charges have been declared not to be "interest" as contemplated by federal laws or various state consumer laws.

Finally, Cable Satellite should point out to the City Commissioners that by placing a limitation on the amount of late charges, the City is foregoing revenues which it collects from the cable operator with respect to such fees.

C.M.C.

(a) competition preference; local and federal regulation

(1) In general

No Federal agency or State may regulate the rates for the provision of cable service except to the extent provided under this section and section 532. Any franchising authority may regulate the rates for the provision of cable service, or any other communications service provided over a cable system to cable subscribers, but only to the extent provided under this section. No Federal agency, State, or franchising authority may regulate the rates for cable service of a cable system that is owned or operated by a local government or franchising authority within whose jurisdiction that cable system is located and that is the only cable system located within such jurisdiction.

(2) Preference for competition

If the Commission finds that a cable system is subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation by the Commission or by a State or franchising authority under this section. If the Commission finds that a cable system is not subject to effective competition --

(A) the rates for the provision of basic cable service shall be subject to regulation by a franchising authority, or by the Commission if the Commission exercises jurisdiction pursuant to paragraph (6), in accordance with the regulations prescribed by the Commission under subsection (b); and

(B) the rates for cable programming service shall be subject to regulation by the Commission under subsection (6).

(3) Qualification of franchising authority

A franchising authority that seeks to exercise the regulatory jurisdiction permitted under paragraph (2)(A) shall file with the Commission a written certification that --

(A) the franchising authority will adopt and administer regulations with respect to the rates subject to regulation under this section that are consistent with the regulations prescribed by the Commission under subsection (b);

(B) the franchising authority has the legal authority to adopt, and the personnel to administer, such regulations; and

(C) procedural rules and regulations applicable to rate regulation promulgated by such authority provide a reasonable opportunity for consideration of the views of interested parties.

(4) Approval by commission

A certification filed by a franchising authority under paragraph (3) shall be effective 30 days after the date on which it is filed unless the Commission finds, after notice to the authority and a reasonable opportunity for the authority to comment, that --

(A) the franchising authority has adopted, or is administering, regulations with regard to the rates subject to regulation under this section that are not consistent with the regulations prescribed by the Commission under subsection (b);

(B) the franchising authority does not have the legal authority to adopt, or the personnel to administer, such regulations; or

(C) procedural laws and regulations applicable to rate regulation proceedings by such authority do not provide a reasonable opportunity for consideration of the views of interested parties.

If the Commission disapproves a franchising authority's certification, the commission shall notify the franchising authority of any revisions or modifications necessary to obtain approval.

(5) Revocation of jurisdiction

Upon petition by a cable operator or other interested party, the Commission shall review the regulation of cable system rates by a franchising authority under this subsection. A copy of the petition shall be provided to the franchising authority by the person filing the petition. If the Commission finds that the franchising authority has acted inconsistently with the requirements of this subsection, the Commission shall grant appropriate relief to the Commission, after the franchising authority has had a reasonable opportunity to comment, determines that the State and local laws and regulations are not in conformance with the regulations prescribed by the Commission under subsection (b), the Commission shall revoke the jurisdiction of such authority.

(6) Exercise of jurisdiction by Commission

If the Commission disapproves a franchising authority's certification under paragraph (2), or revokes such authority's jurisdiction under paragraph (5), the Commission shall exercise the franchising authority's regulatory jurisdiction under paragraph (2)(A) until the franchising authority has applied to exercise that jurisdiction by filing a new certification that meets the requirements of paragraph (2). Such new certification shall be effective upon approval by the Commission. The Commission shall act to approve or disapprove any such new certification within 90 days after the date it is filed.

(b) Establishment of basic service tier and regulations

(1) Commission obligation to subscribers

The Commission shall, by regulation, ensure that the rates for the basic service tier are reasonable. Such regulations shall be designed to achieve the goal of protecting subscribers of any cable system that is not subject to effective competition from rates for the basic service tier that exceed the rates that could be charged for the basic service tier if such cable system were subject to effective competition.

(2) Commission regulations

Within 90 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall prescribe, and periodically amend or revise, regulations to carry out its obligations under paragraph (1). In prescribing such regulations, the Commission shall

(3) direct seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities, and the Commission,